

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Kormahyah Karmue

v.

Civil No. 17-cv-107-LM-AKJ

David Remington, Chief Deputy
United States Marshal, et al.

REPORT AND RECOMMENDATION

Before the court are plaintiff Kormahyah Karmue's four motions seeking temporary restraining orders (Doc. Nos. 17-20), and four motions seeking preliminary injunctions (Doc. Nos. 21-24). The motions have been referred to this magistrate judge for a report and recommendation as to disposition. See June 23, 2017 Order.

Standard

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). "[T]he first two factors, likelihood of success on the merits and of irreparable harm, [are] 'the most important'" in the calculus." Bruns v.

Mayhew, 750 F.3d 61, 65 (1st Cir. 2014). “[P]erhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” See Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc., 645 F.3d 26, 32 (1st Cir. 2011) (quoting 11A C. Wright, A. Miller & M. Kane, Federal Practice & Procedure § 2948, at 129 (2d ed. 1995)). The burden of proof is on the movant. See Esso Std. Oil Co. v. Monroig-Zayas, 445 F.3d 13, 18 (1st Cir. 2006).

“Irreparable harm most often exists where a party has no adequate remedy at law.” Charlesbank Equity Fund II, Ltd. P’ship v. Blinds To Go, Inc., 370 F.3d 151, 162 (1st Cir. 2004). “A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party’s unsubstantiated fears of what the future may have in store.” Id.

Background

In his motions for injunctive relief, Karmue asks the court to direct the individual defendants -- whom Karmue has identified as John Does #1, #2, #3, and David Remington -- to preserve certain evidence. Karmue alleges that the evidence at issue is subject to discovery.

Discussion

A party has "a general duty to preserve relevant evidence once it has notice of, or reasonably foresees, litigation." See P.R. Tel. Co., v. San Juan Cable LLC, No. 11-2135 (GAG/BJM), 2013 U.S. Dist. LEXIS 146081, at *2-*3, 2013 WL 5533711, *1 (D.P.R. Oct. 7, 2013), appeal filed, No. 16-2132 (1st Cir. Sept. 6, 2016). Karmue's complaint in this matter arises out of events alleged to have occurred on April 23, 2015. No facts are asserted in any of the motions seeking either a temporary restraining order or a preliminary injunction to indicate that discoverable video, documents, or other materials in this case concerning that event, that still exist at this time, are likely to be destroyed or lost before any defendant receives notice of this case.

Karmue has failed to meet his burden to demonstrate that he is likely to be irreparably harmed absent a court order directing the parties to preserve evidence. The court need not consider the remaining preliminary injunction factors at this time. Accordingly, the motions seeking temporary restraining orders (Doc. Nos. 17-20) and the motions seeking preliminary injunctions (Doc. Nos. 21-24) should be denied, without

prejudice to Karmue's ability to renew his motion should circumstances arise warranting such relief.

Conclusion

For the foregoing reasons, the undersigned magistrate judge recommends that the district judge deny the motions for preliminary injunctive relief (Doc. Nos. 17-24) without prejudice to Karmue's ability to seek preliminary injunctive relief in the future should circumstances warrant. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). The fourteen-day period may be extended upon motion. Failure to file specific written objections to the Report and Recommendation within the specified time waives the right to appeal the district court's order. See Santos-Santos v. Torres-Centeno, 842 F.3d 163, 168 (1st Cir. 2016); Fed. R. Civ. P. 72(b)(2).



Andrea K. Johnstone
United States Magistrate Judge

June 26, 2017

cc: Kormahyah Karmue, pro se